

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

6 ePLUS, INC. : Civil Action No.
7 vs. : 3:09CV620
8 LAWSON SOFTWARE, INC. : September 27, 2010

11 COMPLETE TRANSCRIPT OF THE FINAL PRETRIAL CONFERENCE
12 BEFORE THE HONORABLE ROBERT E. PAYNE
13 UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Volume I of II

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1 accuse it when it's being used to perform some other software
2 function such as financial accounting or human resources or
3 that. We don't say that's an infringing system. We never
4 claimed damages for it when it's on a system that doesn't
5 involve this procurement functionality.

6 THE COURT: Let's play this out and assume you are
7 right. Assume you prove that there's infringement of the other
8 things that are charged as infringing. I issue an injunction
9 against using those. I do not issue an injunction against the
10 Lawson platform, Lawson System Foundation and ProcessFlow.
11 They can use that to do anything else.

12 MR. ROBERTSON: I would agree with that. I would not
13 ask for an injunction that would ask to enjoin Lawson Software
14 Foundation, for example, when it's being used with financial
15 accounting.

16 THE COURT: How would I enjoin it when it is being
17 used with anything else that's infringed? As long as I say you
18 can't use the infringing product, period, it doesn't make any
19 difference whether you use it with a hamburger patty or a
20 George Foreman grill or a computer or these foundations, does
21 it? If you use it, you are, in fact, violating the injunction;
22 isn't that right?

23 MR. ROBERTSON: No, in this sense, Your Honor,
24 because it's not an infringing apparatus or it's not performing
25 the steps of the method claim without being able to access and

1 utilize the foundation. You can't build a house without a
2 foundation, and once you do, the house is a complete house.
3 That's what's going on here.

4 So we would not ask to enjoin Lawson System
5 Foundation when it's being used with something that doesn't
6 create an entire infringing system. It's like putting together
7 a house. You need that foundation, otherwise the house can't
8 stand up. But if the foundation were used to build something
9 else and the patent covered houses that could be utilized by
10 people, that is a use in an infringing system.

11 THE COURT: I don't envision any circumstance in
12 which I would enjoin the Lawson System Foundation and
13 ProcessFlow 9 at all. I would enjoin the use of anything that
14 infringes, and if they used it on that process, of course it
15 would be an infringement, but it wouldn't make any difference
16 if they used it on some other process. It would still be an
17 infringement and a violation -- a violation of the injunction
18 in either case.

19 I do not understand your position, and you have to
20 show me a case that says you are right, because I don't think
21 you're right, and I don't see the facts in Weaver's report.
22 I've read Weaver's report. I see one footnote that deals with
23 it, but that's all that's been cited to me. Maybe there's
24 something else. You say you don't have the report with you, so
25 brief it, and brief it on the same schedule that the others